

AMENDED IN ASSEMBLY MARCH 30, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 496

Introduced by Assembly Member Aghazarian

February 16, 2005

An act to amend Section 22350 of the Business and Professions Code, to amend Sections 412.10, 685.090, 1985.3, and 1985.6 of the Code of Civil Procedure, and to amend Section 4013 of the Penal Code, relating to service of process.

LEGISLATIVE COUNSEL'S DIGEST

AB 496, as amended, Aghazarian. Service of process.

(1) Existing law requires every person who makes service of process in this state for compensation more than 10 times a year to register as a process server with the county clerk, with specified exceptions including attorneys and their employees and licensed private investigators and their employees.

This bill would limit the latter exceptions to persons when ~~performing acts for which a license is required, and override those exceptions whenever the law requires service by a registered process server~~ *serving process related to cases for which the attorney or private investigator is providing legal or investigative services, and would specify that those persons excepted from the registration requirement shall not be deemed registered process servers.*

(2) Existing law provides that a plaintiff may have the clerk issue one or more summons for any defendant.

This bill would require the clerk, in that connection, ~~not to return the original summons, but to maintain it in the file to keep each original summons in the court records and provide a copy of each summons issued to the plaintiff who requested issuance of the summons.~~

(3) Existing law specifies the costs that are added to and become part of a judgment.

This bill would add to those costs, the anticipated cost of levy to be imposed, as specified.

(4) Existing law requires the service of a subpoena duces tecum upon a consumer or an employee to be made, among other requirements, ~~at least 5 days prior to service upon the custodian of records, plus additional time, as specified, if service is made by mail with a copy of the subpoena duces tecum, the affidavit supporting the issuance of the subpoena, if any, specified notice, and proof of service.~~

This bill would ~~delete that time requirement and further provide that~~ if the subpoenaing party is the consumer or the employee, and the consumer or the employee is the only subject of the subpoenaed records, ~~no notice is to the consumer or the employee, and delivery of the other documents, are not required.~~

(5) Existing law requires a sheriff or jailer upon whom a paper in a judicial proceeding is served, to forthwith deliver it to the prisoner with a note thereon of the time of its service. Existing law provides that if he or she neglects to do so, he or she is liable to the prisoner for all resulting damages.

This bill would ~~limit this provision to papers served by a registered process server. The bill would also specify that all legal process that is so directed to a prisoner and delivered to a jailer, correctional officer, or any person designated by the penal facility to accept service of process shall be deemed to have been personally served through the penal facility representative, who shall be identified by name and title on the proof of service instead require a sheriff or jailer, when served with judicial process directed to a person in his or her custody, to deliver it to the prisoner. The bill would specify that service in this manner constitutes personal service unless the sheriff or jailer notifies, within 2 days, the party requesting service of the reason for not delivering the judicial process to the prisoner. The sheriff or jailer would be liable for any damages to any aggrieved party for failing to comply.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 22350 of the Business and Professions Code is amended to read:

22350. (a) Any natural person who makes more than 10 services of process within this state during one calendar year, for specific compensation or in expectation of specific compensation, where that compensation is directly attributable to the service of process, shall file and maintain a verified certificate of registration as a process server with the county clerk of the county in which he or she resides or has his or her principal place of business. Any corporation or partnership that derives or expects to derive compensation from service of process within this state shall also file and maintain a verified certificate of registration as a process server with the county clerk of the county in which the corporation or partnership has its principal place of business.

(b) This chapter shall not apply to any of the following:

(1) Any sheriff, marshal, or government employee who is acting within the course and scope of his or her employment.

(2) An attorney or his or her employees, ~~when performing acts for which a license is required.~~ *serving process related to cases for which the attorney is providing legal services.*

(3) Any person who is specially appointed by a court to serve its process.

(4) A licensed private investigator or his or her employees, ~~when performing acts for which a license is required.~~ *when serving process related to cases for which the private investigator is providing investigative services.*

(5) A professional photocopier registered under Section 22450, or an employee thereof, whose only service of process relates to subpoenas for the production of records, which subpoenas specify that the records be copied by that registered professional photocopier.

~~(e) Whenever any provision of law requires an act to be performed by a registered process server, registration under this section is required.~~

(c) Persons listed in subdivision (b) shall not be deemed registered process servers, and have none of the rights or privileges of registered process servers.

1 SEC. 2. Section 412.10 of the Code of Civil Procedure is
2 amended to read:

3 412.10. After payment of all applicable fees, the plaintiff may
4 have the clerk issue one or more summons for any defendant.
5 ~~The clerk shall not return the original summons, but shall~~
6 ~~maintain it in the file. The clerk shall keep each original~~
7 ~~summons in the court records and provide a copy of each~~
8 ~~summons issued to the plaintiff who requested issuance of the~~
9 ~~summons.~~

10 SEC. 3. Section 685.090 of the Code of Civil Procedure is
11 amended to read:

12 685.090. (a) Costs are added to and become a part of the
13 judgment:

14 (1) Upon the filing of an order allowing the costs pursuant to
15 this chapter.

16 (2) If a memorandum of costs is filed pursuant to Section
17 685.070 and no motion to tax is made, upon the expiration of the
18 time for making the motion.

19 (3) As specified in Section 685.095.

20 (b) The costs added to the judgment pursuant to this section
21 are included in the principal amount of the judgment remaining
22 unsatisfied.

23 (c) The anticipated cost of levy to be imposed pursuant to
24 Section 685.095, may be designated on the notice of levy form as
25 a recoverable cost based upon the ~~levying party's judgment~~
26 ~~creditor's~~ memorandum of costs filed ~~with~~ *during* the pendency
27 of the levy, subject to limitation by a judgment debtor's motion
28 to tax costs.

29 (d) If a writ or earnings withholding order is outstanding at the
30 time the costs are added to the judgment pursuant to this section,
31 the levying officer shall add the amount of those costs to the
32 amount to be collected pursuant to the writ or earnings
33 withholding order if the levying officer receives either of the
34 following before the writ or earnings withholding order is
35 returned:

36 (1) A certified copy of the court order allowing the costs.

37 (2) A certificate from the clerk of the court that the costs have
38 been added to the judgment where the costs have been added to
39 the judgment after a memorandum of costs has been filed

1 pursuant to Section 685.070 and no motion to tax has been made
2 within the time allowed for making the motion.

3
4 (e) The levying officer shall include the costs described in
5 subdivision (d) in the amount of the sale or collection distributed
6 to the judgment creditor only if the levying officer receives the
7 certified copy of the court order or the clerk's certificate before
8 the distribution is made.

9 SEC. 4. Section 1985.3 of the Code of Civil Procedure is
10 amended to read:

11 1985.3. (a) For purposes of this section, the following
12 definitions apply:

13 (1) "Personal records" means the original, any copy of books,
14 documents, other writings, or electronic data pertaining to a
15 consumer and which are maintained by any "witness" which is a
16 physician, dentist, ophthalmologist, optometrist, chiropractor,
17 physical therapist, acupuncturist, podiatrist, veterinarian,
18 veterinary hospital, veterinary clinic, pharmacist, pharmacy,
19 hospital, medical center, clinic, radiology or MRI center, clinical
20 or diagnostic laboratory, state or national bank, state or federal
21 association (as defined in Section 5102 of the Financial Code),
22 state or federal credit union, trust company, anyone authorized by
23 this state to make or arrange loans that are secured by real
24 property, security brokerage firm, insurance company, title
25 insurance company, underwritten title company, escrow agent
26 licensed pursuant to Division 6 (commencing with Section
27 17000) of the Financial Code or exempt from licensure pursuant
28 to Section 17006 of the Financial Code, attorney, accountant,
29 institution of the Farm Credit System, as specified in Section
30 2002 of Title 12 of the United States Code, or telephone
31 corporation which is a public utility, as defined in Section 216 of
32 the Public Utilities Code, or psychotherapist, as defined in
33 Section 1010 of the Evidence Code, or a private or public
34 preschool, elementary school, secondary school, or
35 postsecondary school as described in Section 76244 of the
36 Education Code.

37 (2) "Consumer" means any individual, partnership of five or
38 fewer persons, association, or trust which has transacted business
39 with, or has used the services of, the witness or for whom the
40 witness has acted as agent or fiduciary.

(3) “Subpoenaing party” means the person or persons causing a subpoena duces tecum to be issued or served in connection with any civil action or proceeding pursuant to this code, but shall not include the state or local agencies described in Section 7465 of the Government Code, or any entity provided for under Article VI of the California Constitution in any proceeding maintained before an adjudicative body of that entity pursuant to Chapter 4 (commencing with Section 6000) of Division 3 of the Business and Professions Code.

(4) “Deposition officer” means a person who meets the qualifications specified in Section 2020.420.

(b) Prior to the date called for in the subpoena duces tecum for the production of personal records, the subpoenaing party shall serve or cause to be served on the consumer whose records are being sought a copy of the subpoena duces tecum, of the affidavit supporting the issuance of the subpoena, if any, and of the notice described in subdivision (e), and proof of service as indicated in paragraph (1) of subdivision (c). This service shall be made as follows:

(1) To the consumer personally, or at his or her last known address, or in accordance with Chapter 5 (commencing with Section 1010) of Title 14 of Part 3, or, if he or she is a party, to his or her attorney of record. If the consumer is a minor, service shall be made on the minor’s parent, guardian, conservator, or similar fiduciary, or if one of them cannot be located with reasonable diligence, then service shall be made on any person having the care or control of the minor or with whom the minor resides or by whom the minor is employed, and on the minor if the minor is at least 12 years of age.

(2) Not less than 10 days prior to the date for production specified in the subpoena duces tecum, plus the additional time provided by Section 1013 if service is by mail.

(3) At least five days prior to service upon the custodian of the records, plus the additional time provided by Section 1013 if service is by mail.

(c) Prior to the production of the records, the subpoenaing party shall do either of the following:

(1) Serve or cause to be served upon the witness a proof of personal service or of service by mail attesting to compliance with subdivision (b).

1 (2) Furnish the witness a written authorization to release the
2 records signed by the consumer or by his or her attorney of
3 record. The witness may presume that any attorney purporting to
4 sign the authorization on behalf of the consumer acted with the
5 consent of the consumer, and that any objection to release of
6 records is waived.

7 (d) A subpoena duces tecum for the production of personal
8 records shall be served in sufficient time to allow the witness a
9 reasonable time, as provided in Section 2020.410, to locate and
10 produce the records or copies thereof.

11 (e) Every copy of the subpoena duces tecum and affidavit, if
12 any, served on a consumer or his or her attorney in accordance
13 with subdivision (b) shall be accompanied by a notice, in a
14 typeface designed to call attention to the notice, indicating that
15 (1) records about the consumer are being sought from the witness
16 named on the subpoena; (2) if the consumer objects to the
17 witness furnishing the records to the party seeking the records,
18 the consumer must file papers with the court or serve a written
19 objection as provided in subdivision (g) prior to the date
20 specified for production on the subpoena; and (3) if the party
21 who is seeking the records will not agree in writing to cancel or
22 limit the subpoena, an attorney should be consulted about the
23 consumer's interest in protecting his or her rights of privacy. If a
24 notice of taking of deposition is also served, that other notice
25 may be set forth in a single document with the notice required by
26 this subdivision.

27 (f) A subpoena duces tecum for personal records maintained
28 by a telephone corporation which is a public utility, as defined in
29 Section 216 of the Public Utilities Code, shall not be valid or
30 effective unless it includes a consent to release, signed by the
31 consumer whose records are requested, as required by Section
32 2891 of the Public Utilities Code.

33 (g) Any consumer whose personal records are sought by a
34 subpoena duces tecum and who is a party to the civil action in
35 which this subpoena duces tecum is served may, prior to the date
36 for production, bring a motion under Section 1987.1 to quash or
37 modify the subpoena duces tecum. Notice of the bringing of that
38 motion shall be given to the witness and deposition officer at
39 least five days prior to production. The failure to provide notice
40 to the deposition officer shall not invalidate the motion to quash

1 or modify the subpoena duces tecum but may be raised by the
2 deposition officer as an affirmative defense in any action for
3 liability for improper release of records.

4 Any other consumer or nonparty whose personal records are
5 sought by a subpoena duces tecum may, prior to the date of
6 production, serve on the subpoenaing party the witness, and the
7 deposition officer, a written objection that cites the specific
8 grounds on which production of the personal records should be
9 prohibited.

10 No witness or deposition officer shall be required to produce
11 personal records after receipt of notice that the motion has been
12 brought by consumer, or after receipt of a written objection from
13 a nonparty consumer, except upon order of the court in which the
14 action is pending or by agreement of the parties, witnesses, and
15 consumers affected.

16 The party requesting a consumer's personal records may bring
17 a motion under Section 1987.1 to enforce the subpoena within 20
18 days of service of the written objection. The motion shall be
19 accompanied by a declaration showing a reasonable and good
20 faith attempt at informal resolution of the dispute between the
21 party requesting the personal records and the consumer or the
22 consumer's attorney.

23 (h) Upon good cause shown and provided that the rights of
24 witnesses and consumers are preserved, a subpoenaing party
25 shall be entitled to obtain an order shortening the time for service
26 of a subpoena duces tecum or waiving the requirements of
27 subdivision (b) where due diligence by the subpoenaing party has
28 been shown.

29 (i) Nothing contained in this section shall be construed to
30 apply to any subpoena duces tecum which does not request the
31 records of any particular consumer or consumers and which
32 requires a custodian of records to delete all information which
33 would in any way identify any consumer whose records are to be
34 produced.

35 (j) This section shall not apply to proceedings conducted under
36 Division 1 (commencing with Section 50), Division 4
37 (commencing with Section 3200), Division 4.5 (commencing
38 with Section 6100), or Division 4.7 (commencing with Section
39 6200) of the Labor Code.

1 (k) Failure to comply with this section shall be sufficient basis
2 for the witness to refuse to produce the personal records sought
3 by a subpoena duces tecum.

4 (l) If the subpoenaing party is the consumer, and the consumer
5 is the only subject of the subpoenaed records, notice ~~is to the~~
6 *consumer, and delivery of the other documents specified in*
7 *subdivision (b) to the consumer, is not* required under this
8 section.

9 SEC. 5. Section 1985.6 of the Code of Civil Procedure is
10 amended to read:

11 1985.6. (a) For purposes of this section, the following
12 definitions apply:

13 (1) "Deposition officer" means a person who meets the
14 qualifications specified in paragraph (3) of subdivision (d) of
15 Section 2020.

16 (2) "Employee" means any individual who is or has been
17 employed by a witness subject to a subpoena duces tecum.
18 "Employee" also means any individual who is or has been
19 represented by a labor organization that is a witness subject to a
20 subpoena duces tecum.

21 (3) "Employment records" means the original or any copy of
22 books, documents, other writings, or electronic data pertaining to
23 the employment of any employee maintained by the current or
24 former employer of the employee, or by any labor organization
25 that has represented or currently represents the employee.

26 (4) "Labor organization" has the meaning set forth in Section
27 1117 of the Labor Code.

28 (5) "Subpoenaing party" means the person or persons causing
29 a subpoena duces tecum to be issued or served in connection with
30 any civil action or proceeding, but does not include the state or
31 local agencies described in Section 7465 of the Government
32 Code, or any entity provided for under Article VI of the
33 California Constitution in any proceeding maintained before an
34 adjudicative body of that entity pursuant to Chapter 4
35 (commencing with Section 6000) of Division 3 of the Business
36 and Professions Code.

37 (b) Prior to the date called for in the subpoena duces tecum of
38 the production of employment records, the subpoenaing party
39 shall serve or cause to be served on the employee whose records
40 are being sought a copy of: the subpoena duces tecum; the

1 affidavit supporting the issuance of the subpoena, if any; and the
2 notice described in subdivision (e), and proof of service as
3 provided in paragraph (1) of subdivision (c). This service shall be
4 made as follows:

5 (1) To the employee personally, or at his or her last known
6 address, or in accordance with Chapter 5 (commencing with
7 Section 1010) of Title 14 of Part 3, or, if he or she is a party, to
8 his or her attorney of record. If the employee is a minor, service
9 shall be made on the minor's parent, guardian, conservator, or
10 similar fiduciary, or if one of them cannot be located with
11 reasonable diligence, then service shall be made on any person
12 having the care or control of the minor, or with whom the minor
13 resides, and on the minor if the minor is at least 12 years of age.

14 (2) Not less than 10 days prior to the date for production
15 specified in the subpoena duces tecum, plus the additional time
16 provided by Section 1013 if service is by mail.

17 (3) *At least five days prior to service upon the custodian of the*
18 *employment records, plus the additional time provided by Section*
19 *1013 if service is by mail.*

20 (c) Prior to the production of the records, the subpoenaing
21 party shall either:

22 (1) Serve or cause to be served upon the witness a proof of
23 personal service or of service by mail attesting to compliance
24 with subdivision (b).

25 (2) Furnish the witness a written authorization to release the
26 records signed by the employee or by his or her attorney of
27 record. The witness may presume that the attorney purporting to
28 sign the authorization on behalf of the employee acted with the
29 consent of the employee, and that any objection to release of
30 records is waived.

31 (d) A subpoena duces tecum for the production of employment
32 records shall be served in sufficient time to allow the witness a
33 reasonable time, as provided in paragraph (1) of subdivision (d)
34 of Section 2020, to locate and produce the records or copies
35 thereof.

36 (e) Every copy of the subpoena duces tecum and affidavit
37 served on an employee or his or her attorney in accordance with
38 subdivision (b) shall be accompanied by a notice, in a typeface
39 designed to call attention to the notice, indicating that (1)
40 employment records about the employee are being sought from

1 the witness named on the subpoena; (2) the employment records
2 may be protected by a right of privacy; (3) if the employee
3 objects to the witness furnishing the records to the party seeking
4 the records the employee shall file papers with the court prior to
5 the date specified for production on the subpoena; and (4) if the
6 subpoenaing party does not agree in writing to cancel or limit the
7 subpoena, an attorney should be consulted about the employee's
8 interest in protecting his or her rights of privacy. If a notice of
9 taking of deposition is also served, that other notice may be set
10 forth in a single document with the notice required by this
11 subdivision.

12 (f) Any employee whose employment records are sought by a
13 subpoena duces tecum may, prior to the date for production,
14 bring a motion under Section 1987.1 to quash or modify the
15 subpoena duces tecum. Notice of the bringing of that motion
16 shall be given to the witness and the deposition officer at least
17 five days prior to production. The failure to provide notice to the
18 deposition officer does not invalidate the motion to quash or
19 modify the subpoena duces tecum but may be raised by the
20 deposition officer as an affirmative defense in any action for
21 liability for improper release of records.

22 Any nonparty employee whose employment records are sought
23 by a subpoena duces tecum may, prior to the date of production,
24 serve on the subpoenaing party, and the deposition officer, the
25 witness a written objection that cites the specific grounds on
26 which production of the employment records should be
27 prohibited.

28 No witness or deposition officer shall be required to produce
29 employment records after receipt of notice that the motion has
30 been brought by an employee, or after receipt of a written
31 objection from a nonparty employee, except upon order of the
32 court in which the action is pending or by agreement of the
33 parties, witnesses, and employees affected.

34 The party requesting an employee's employment records may
35 bring a motion under subdivision (c) of Section 1987 to enforce
36 the subpoena within 20 days of service of the written objection.
37 The motion shall be accompanied by a declaration showing a
38 reasonable and good faith attempt at informal resolution of the
39 dispute between the party requesting the employment records and
40 the employee or the employee's attorney.

(g) Upon good cause shown and provided that the rights of witnesses and employees are preserved, a subpoenaing party shall be entitled to obtain an order shortening the time for service of a subpoena duces tecum or waiving the requirements of subdivision (b) where due diligence by the subpoenaing party has been shown.

(h) This section may not be construed to apply to any subpoena duces tecum which does not request the records of any particular employee or employees and which requires a custodian of records to delete all information which would in any way identify any employee whose records are to be produced.

(i) This section does not apply to proceedings conducted under Division 1 (commencing with Section 50), Division 4 (commencing with Section 3200), Division 4.5 (commencing with Section 6100), or Division 4.7 (commencing with Section 6200) of the Labor Code.

(j) Failure to comply with this section shall be sufficient basis for the witness to refuse to produce the employment records sought by subpoena duces tecum.

(k) If the subpoenaing party is the employee, and the employee is the only subject of the subpoenaed records, notice *to the employee, and delivery of the other documents specified in subdivision (b) to the employee*, is not required under this section.

SEC. 6. Section 4013 of the Penal Code is amended to read:

4013. ~~(a) A sheriff or jailer upon whom a paper in a judicial proceeding, directed to a prisoner in his or her custody, is served by a person specified in Section 22350 of the Business and Professions Code, shall forthwith deliver it to the prisoner, with a note thereon of the time of its service. For a neglect to do so, he or she is liable to the prisoner for all damages occasioned thereby.~~

~~(b) All legal process that is directed to a prisoner and delivered pursuant to subdivision (a) to a jailer, correctional officer, or any person designated by the penal facility to accept service of process shall be deemed to have been personally served through the penal facility representative, who shall be identified by name and title on the proof of service.~~

A sheriff or jailer, when served with judicial process directed to a person in his or her custody, shall deliver it to the prisoner.

1 *Service in this manner shall constitute personal service unless*
2 *the sheriff or jailer notifies, within two days, the party requesting*
3 *service of the reason for not delivering the judicial process to the*
4 *prisoner. The sheriff or jailer shall be liable for any damages to*
5 *any aggrieved party for failing to comply with this section.*
6 *Nothing in this section shall limit or restrict any person who may*
7 *lawfully serve process from serving process pursuant to this*
8 *section.*

O